

Judge Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA, ) NO. CR04-5134RBL  
Plaintiff, )  
v. ) GOVERNMENT'S SENTENCING  
RYAN HAMBURG, ) MEMORANDUM  
Defendant. )

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Gregory A. Gruber, Assistant United States Attorney for said District, submits its sentencing memorandum in this case.

## A. Background

Defendant Ryan Hamburg entered a guilty plea to one count of Possession of Visual Depictions of Minors Engaged in Sexually Explicit Conduct, in violation of Title 18, United States Code, §§ 2252(a)(4)(B), 2252(b)(2), and 2256.

B. Facts of Offense

The defendant stipulated, as summarized from the Plea Agreement, that on February 3, 2004, he knowingly possessed between 100 and 150 images of child pornography. As reflected in the Presentence Report (PSR), the true number of photographs was well over 400 and the defendant posted some of them on the Internet.

1                   C. Sentencing Calculations

2                   The child pornography offense to which defendant Hamburg pleaded guilty  
 3 carries a maximum prison sentence of ten years. The U.S. Sentencing Guidelines,  
 4 which were fully in effect at the time of the plea hearing on May 17, 2004, contemplate  
 5 a sentencing range of 27-33 months of imprisonment. This range is based on a total  
 6 offense level of 18 (adjusted base level of 21, minus 3 for acceptance of responsibility),  
 7 at criminal history category I.<sup>1</sup>

8                   In its sentencing memorandum, the defense asks for only six (6) months custody,  
 9 to be followed by six (6) months in a halfway house. The government believes that this  
 10 number is far too low, but recognizes that some of the defense arguments for less than  
 11 27 months appear to have some merit.

12                  In determining the appropriate Judgment in this case, this Court must consider, in  
 13 addition to the Sentencing Guidelines, the factors set forth in 18 U.S.C. § 3553(a).  
 14 Those factors include: (1) the nature and circumstances of the offenses; (2) the history  
 15 and characteristics of the defendant; (3) the need for the sentence to reflect the  
 16 seriousness of the offense, to promote respect for the law, and to provide just  
 17 punishment for the offense; (4) the need for the sentence to afford adequate deterrence  
 18 to criminal conduct; (5) the need for the sentence to protect the public from further  
 19 crimes of the defendant; (6) the need to provide the defendant with educational and  
 20 vocational training, medical care, or other correctional treatment in the most effective  
 21 manner; (7) the kinds of sentences available; (8) the need to provide restitution to  
 22 victims; and (9) the need to avoid unwarranted sentence disparity among defendants  
 23 involved in similar conduct who have similar records.

24                   D. Sentencing Recommendation

25                  The government believes that the Sentencing Guidelines, although no longer  
 26 mandatory, still get it right in the vast majority of cases. A term of 27 months for this

27                  <sup>1</sup> It should be noted that using 400 as the number of images would have further  
 28 increased defendant's offense level by two, raising the low end of his imprisonment range from  
 27 up to 33 months. A transmission charge would have carried a statutory mandatory  
 minimum of five years imprisonment (per 18 U.S.C. § 2252).

1 crime, especially as compared to what he could have faced under facts that he admitted  
 2 to the investigating agents and facts that they confirmed to be true, would not be  
 3 unreasonable. This may be a case, however, that this Court might find falls into the  
 4 small minority of instances where the Guidelines are higher than necessary. If so, we  
 5 ask that the Court remain mindful of the following.

6 The defendant knowingly and intentionally collected hundreds of images of child  
 7 pornography, some of which showed very young children engaged in very explicit  
 8 sexual acts. Moreover, the defendant admits to still fantasizing about having sexual  
 9 encounters with young boys. While the defense will no doubt respond that the  
 10 defendant is merely reliving in his mind his own previous consensual sexual encounters,  
 11 the fact that his fantasies still involve children rather than solely adults (with whom he  
 12 also reports having had encounters that he could relive) is major cause for concern. Any  
 13 doubt that Dr. Gollogly might be incorrect in his conclusions that defendant Hamburg is  
 14 not a sexual predator and is a low risk to re-offend, would be 100% resolved in favor of  
 15 the safety of minors by imposing a lengthy term of imprisonment.

16 Whatever term of incarceration is ultimately imposed, we join the Probation  
 17 Office in suggesting that it be followed by the maximum term of supervised release,  
 18 here three (3) years. In addition to the normal terms of supervision, all of the special  
 19 terms and conditions listed in the PSR "green sheet" should be ordered, including  
 20 registering as a sex offender, having no unsupervised contact with minors and no  
 21 Internet access, and engaging in all necessary and appropriate mental health/sexual  
 22 offender treatment and counseling (to include use of polygraphs and plethysmographs).

23 Restitution is not an issue in this case because the victims are largely  
 24 unidentifiable, and the "losses" -- of innocence; of self-confidence; of self-worth, no  
 25 matter how untrue or unfair -- are all but impossible to quantify monetarily. It also  
 26 appears that the defendant does not have resources to pay a fine, so the government does  
 27  
 28

1 not seek the imposition of one. The special assessment of \$100 should be made due and  
2 payable immediately.

3 Dated this 15th day of March, 2005.

4 Respectfully submitted,

5 JOHN McKAY  
6 United States Attorney

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## CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2005, I electronically filed the foregoing Government's Sentencing Memorandum with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the Defendant.

s/ Sharon D. Nelson  
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